Justification & Approval Training

Competition in Contracting Act of 1984 (CICA) P.L. 98-369

- Procurements for property or services shall be obtained through full and open competition.
- Seven Exceptions:
  - Only One Responsible Source
  - Unusual And Compelling Urgency
  - Industrial Mobilization
  - International Agreement
  - Authorized Or Required By Statute
  - National Security
  - Public Interest

What is a J&A?

- Acronym stands for “Justification And Approval For Other Than Full And Open Competition”.
- A legal document required under FAR Part 6.3 for “contracting without providing for full and open competition”.
- It provides authority to the contracting officer to award a contract without full & open competition.
- AFARS Part 53.9005 provides format for a Justification And Approval For Other Than Full And Open Competition.

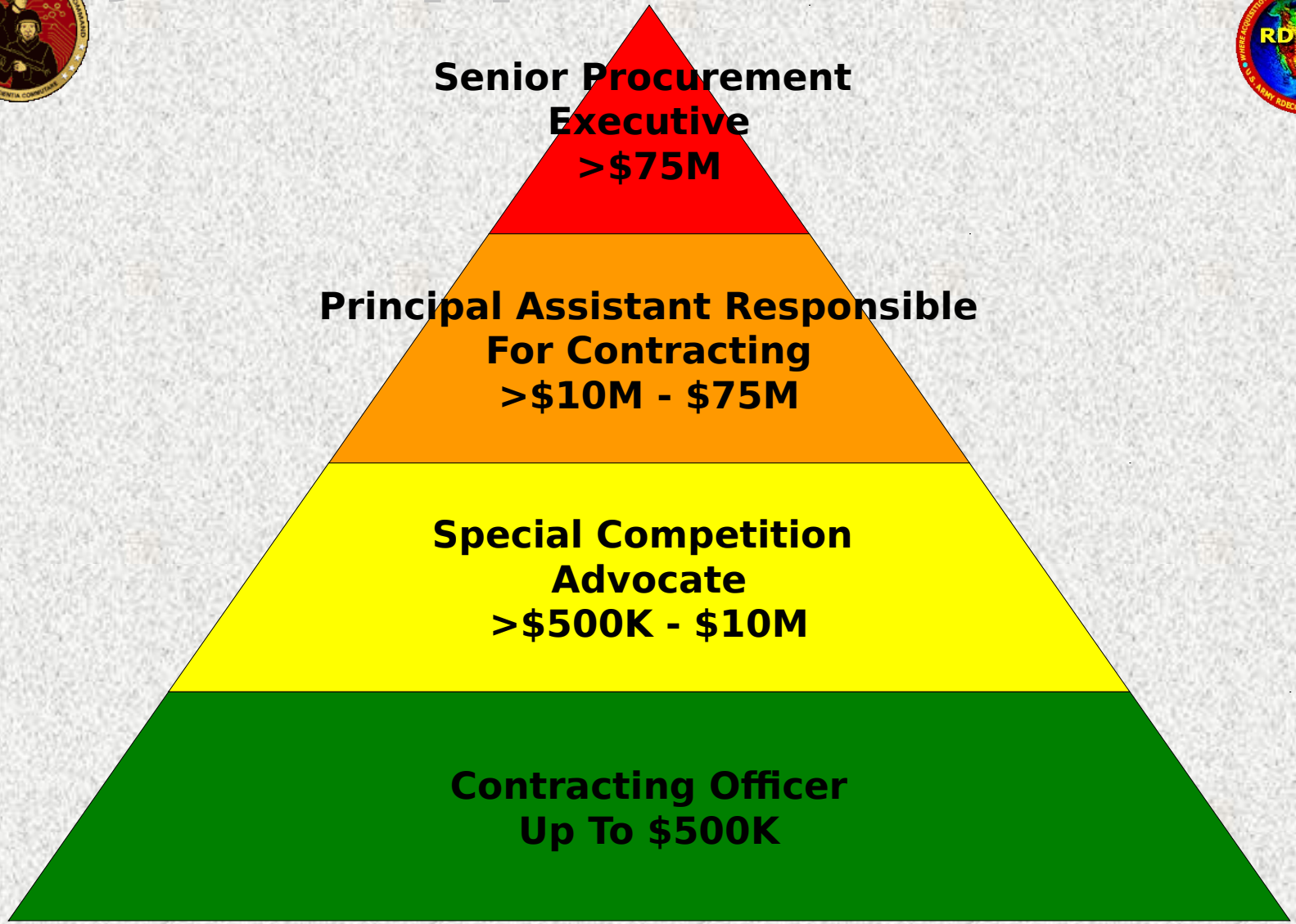
Types of J&As

- Sole source – award of a single contract to one contractor.
- Limited competition – award of a single contract based upon restricted competition.
- Class – award of multiple contracts for a particular program using one J&A.

J&A Approval Levels

DOLLAR VALUE	AUTHORITY
$1 to $2,500 (Micro Purchases)	No Competition Required
$2,501 to $100,000 (Simplified Acquisition Procedures)	Procuring Contracting Officer/ Documentation in lieu of a J&A
$100,001 to $500,000	Procuring Contracting Officer
$500,001 to $10,000,000	Special Competition Advocate
$10,000,001 to $75M	RDECOM AC Principal Assistant Responsible for Contracting
Over $75M	Senior Procurement Exec

J&A Approval Levels



Solicitations

- ***FAR 5.201*** requires the synopsizing of solicitations, unless there is an exception.
- FAR 5.207 (e) discusses using numbered notes to eliminate the unnecessary duplication of information that appears in various solicitations.
- Note 22: used in sole source situations.

Note 22

"The proposed contract action is for supplies or services for which the Government intends to solicit and negotiate with only one source under the authority of FAR 6.302. Interested persons may identify their interest and capability to respond to the requirement or submit proposals. This notice of intent is not a request for competitive proposals. **However, all proposals received within forty-five days (thirty days if award is issued under an existing basic ordering agreement) after date of publication of this synopsis will be considered by the Government**."

Note 22 (cont)

"A determination by the Government not to compete with this proposed contract based upon responses to this notice is solely within the discretion of the Government. Information received will normally be considered solely for the purpose of determining whether to conduct a competitive procurement."

J&A Amendment

- ***AFARS 5106.303-1-90*** **-- Requirements for Amended Justifications.**
- (a) The contracting officer must amend the justification and obtain the required approvals when any of the following occur **prior to award** of the contract:
  - (1) An increase in the dollar value of the prospective contract beyond the authority of the previous approving official;
  - (2) A change in the competitive strategy that further reduces competition; or

Amendment (cont)

- (3) A change in requirements that affects the basis for the justification.

- (d) Prepare all amended justifications as required in ***AFARS 5106.303-2-90(b)(3).***
- For other changes, document the file with a procuring contracting officer memo for file.

AFARS PART 53

- ***AFARS 53.9004***
- *Justification review document*. This is the cover page of the justification and approval document. Begin page numbering on this document. Enter the control number in the upper right corner of each page.

AFARS PART 53

- ***AFARS 53.9005***
- Format for a Justification and Approval for other than Full and Open Competition.
- Continue page numbering.
- If a paragraph of the format does not apply to the contracting action, indicate “Not applicable,” and explain why.

1A. Contracting Activity

- U.S. Army Research, Development and Engineering Command
- Acquisition Center
- AMSRD-AC-(*fill-in*)-(*fill-in*)
- (*insert address*)

1B. Common Errors

- Incorrectly titled: Contracting *Agency*
- Incorrect or Non-Specific Address

2A. Description of Action

- Method of contracting (e.g., new contract or modification)
- Type of contract (e.g., Firm-Fixed-Price) and funds (e.g., RDT&E)
- Identify the funding to be used.
- The estimated share and ceiling arrangements, and fee or profit, when applicable.

2B. Common Errors

- Presenting information required in paragraphs 3 and 5 in paragraph 2.
- Using acronyms and abbreviations prior to spelling out e.g., RDT&E rather than Research Development Test and Evaluation; or FFP rather than Firm-Fixed-Price.
- Failure to say if it's a modification or a new contract. If a modification, identify the contract by number that is being modified.
- Failure to say what the new contract or modification is for.

3A. Description of Supplies/Services

- Supplies: Nomenclature, Quantity, Unit Price, Total Cost (Basic + Options).
- Services: Specify the Government's requirements and the period of performance; estimate total dollar value.
- Describe in sufficient detail for a non-technical person to comprehend; no "jargon".

3B. Common Errors

- Too wordy; narrative should be succinct yet clear.
- Loose ends; it’s in your head not on the paper. Don’t assume the reviewer knows what you know.
- Don’t justify sole source here. Make that justification in paragraph 5. Just describe in paragraph 3 what it is you are buying.
- Costs should cover all contract years, including options.

4A. Authority Cited

- Statutory Citations – FAR cite, description, and 10 U.S.C. 2304 (*fill-in*):

FAR	Description	10 USC 2304
6.302-1	Only one responsible source	(C)(1)
6.302-2	Unusual and compelling urgency	(C)(2)
6.302-3	Industrial mobilization	(C)(3)
6.302-4	International agreement	(C)(4)
6.302-5	Authorized or required by statute	(C)(5)
6.302-6	National security	(C)(6)
6.302-7	Public interest	(C)(7)

Example: FAR 6.302-1, Only One Responsible Source, 10 U.S.C. 2304(c)(1).

4B. Common Errors

- Statutory Authority and/or FAR cite differ from what is cited on the Justification Review Document.
- Statutory Authority and FAR cite are not compatible.

5A. Reason for Authority Cited

- Describe why authority cited is appropriate for this action.
- Identify contractor; include complete address.
- Discuss contractor's *unique* qualifications.
- Identify delayed delivery /cost *impact.*
- Urgency – identify delivery schedule & harm to Government.

5B. Common Errors
One Responsible Source

- Not fully illustrating why only the proposed contractor possesses the unique qualifications essential to fulfilling the Government's requirements.
- Why are the requirements essential?
- Why can't any other source meet our requirements?
- What would be the estimate of duplication of costs or delay in delivery and the associated impact?
- Saying source is "leading provider" or "most qualified".

5C. Common Errors
Urgency

- Failure to demonstrate basis for urgent delivery schedule and impact of delay.
- Failure to adequately describe the nature and extent of the injury, financial or otherwise, to the Government as a consequence of delay in contract award.
- Failure to demonstrate why only one contractor can meet the urgent schedule.

5D. Common Errors: Options

- OPTIONS. While options are not prohibited, for One Responsible Source actions, they are not encouraged. To include options you must illustrate why the rationale for sole source will not change over the option periods.

6A. Efforts to Obtain Competition

- Describe efforts taken to obtain maximum competition for this acquisition.

6B. Descriptive Statement

- The following statement may be used in *most* justifications: “Market research was conducted, details of which are in the market research section of this document. None of these efforts have yielded additional potential sources. There is no competition anticipated for this procurement.”

7A. Actions to Increase Competition

Describe:

- Action taken or to be taken
- Competitive data availability

7B. Common Errors

- Simply stating that no action is being taken. If not, why not?
- The justification must reflect actions being taken to alleviate long term sole source dependency for the item or service.
- No Data. Why not?
- This is a prospective paragraph..actions *you will take*..often this point is missed.

8A. Market Research

- FAR Part 10 (Market Research) & FAR Part 12 (Acquisition of Commercial Items)
- Types of Surveys (appropriate to the circumstances)
  - Federal Business Opportunities (FedBizOps) Page
  - Trade journals
  - Company catalogs
  - Trade shows
  - Engineering symposiums
  - Websites (e.g., DoD Specifications and Standards Home Page – **http://www.dsp.dla.mil**)

8B. Common Errors

- Incorrect Title: Market ***Survey***
- Research discussion lacks the following required information:
  - Date or Timeframe research occurred
  - Who performed the research
  - Description of method used
  - No conclusion: who responded to survey, were they qualified, if not, why not? Do they agree with the Government's conclusion? Did we close the loop with firms that did respond? When/How?

9. Interested Sources

- Indicate solicitation will be synopsized IAW FAR 5.201 and that responses will be evaluated.
- Identify reasons for not synopsizing IAW FAR 5.202.

10A. Other Facts (not *Factors*)

- **Procurement history**
  - Contract Numbers
  - Award Dates
  - Contractors
  - Competitive or Sole Source (include authority)
- **Subcontracting competition**

  - Address the extent of competition anticipated at the subcontractor level.
  - Include applicable clauses such as FAR 52.244-5 (Competition in Subcontracting)

10B. Other Facts (cont)

- **Unusual and compelling urgency-*FAR 6.302-2***
  - Causes of urgent situation
  - Efforts taken to avert situation
  - Harm to the Government (financial or otherwise)

10C. Other Facts (cont)

- **Acquisition Data Availability**: Briefly summarize what data we have or what actions we will take to acquire data that will enable future requirements to be obtained using full and open competition.

11/12. Technical and Requirement Representative Certifications

- Use specific AFARS wording:

  “I certify that the supporting data under my cognizance, which are included in this justification, are accurate and complete to the best of my knowledge and belief.”
- Ensure Name and Title of Technical and Requirement Representatives are identical to those listed on page 1 of the J&A.

13. Fair and Reasonable Cost Determination

- Identify the method(s) that you will use in making your Fair and Reasonable Cost Determination.
- Will you obtain an audit from the Defense Contract Audit Agency?
- Will you compare proposed costs with an Independent Government Cost Estimate?
- Ensure you sign this paragraph before processing the final version of J&A for signature.

14. Procuring Contracting Officer Certification

- Use specific AFARS wording:

"I certify that this justification is accurate and complete to the best of my knowledge and belief."

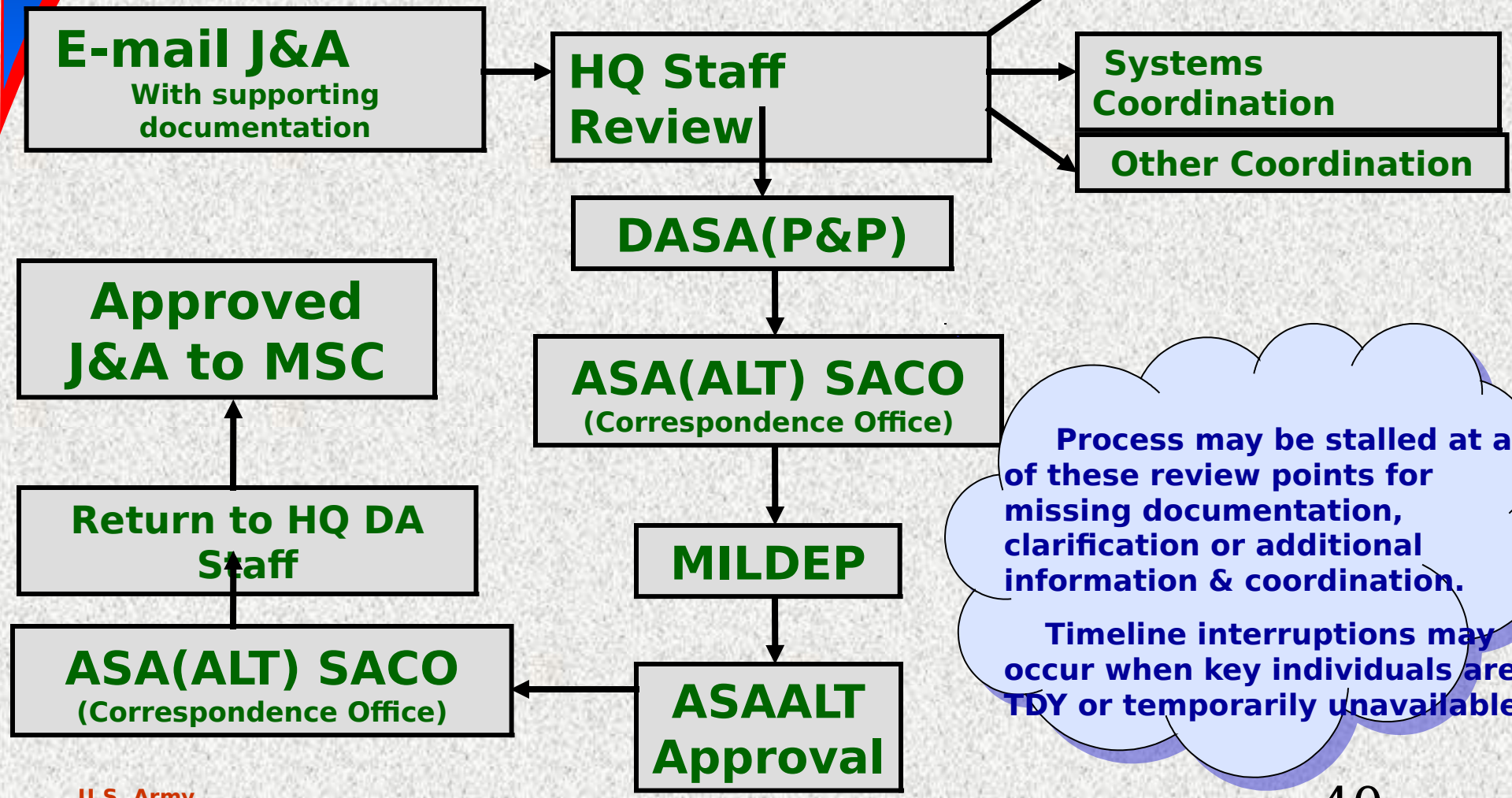
- Ensure you sign this paragraph before processing the final version of J&A for signature.

Approval Block

- Use specific AFARS wording
- State precisely the supplies or services you wish to be approved to procure. The best way to do this is to “Cut and Paste” from paragraph 2

HQDA J&A Review Process

4 – 6 weeks average review time



HQDA J&A Review Process

To facilitate the J&A review process:

- Follow the AFARS format at 5153.9004 -- Format for a Justification Review Document for Other Than Full and Open Competition.
- Use the paperless J&A process and e-mail your J&A with all attachments to psstaff@saalt.army.mil.
- Submit signature pages as .pdf, .ppt, or doc.
- Provide a current acquisition plan or acquisition strategy.

General questions for a J&A

- Does J&A include conflicting statements?
- Does J&A explain or justify limiting competition?
- Does the J&A adequately describe why the agency needs the particular product?
- If citing the authority for “Only One Responsible Source”, does the justification inappropriately suggest that there are other providers of these services, e.g., use language that the source is the “leading provider” or “most qualified”?
- If the justification for sole source discusses delays or duplication of costs are estimates of the delays or duplication of costs clearly articulated in the document?

General questions for a J&A

- Does the justification discuss actions that will be
  taken in the future to enable future requirements to
  be competed or explain why no actions are being
  taken to increase competition in the future?
- Has the agency made an attempt to ascertain

  whether alternative sources could meet its needs?
- Has the requiring activity conducted appropriate

General questions for a J&A

Has the J&A convincingly shown that other firms cannot fulfill its needs?

- Is there indication of any effort to publicize the requirement or to consider other possible commercial sources?
- If sources expressed interest did the Government contact them before making the sole source award to explain why it had determined that it was not a source that could meet the Government's requirements?
- If a synopsis is required, does the synopsis provide an accurate description of the item or service to be

General questions for a J&A

- If the proposed action was not synopsized is an appropriate exception to the synopsis requirement articulated in the J&A?
- Does the J&A require a contract of a lengthy term,
  e.g. five years, without addressing why a contract of
  shorter duration would be awarded and a competitive procurement begun?
- Does the Procurement History identify other sources that have provided the required item or service previously? If so did the Market Research include contacting these sources?

General questions for a J&A citing "Unusual and Compelling Urgency"

- Does the J&A factually demonstrate that there is an urgent requirement and that an award must be made within an unusually short time frame?
- Did J&A reasonably establish such an unusual and compelling urgency that the government would be seriously injured?
- Did the requiring activity certify that the government will experience serious injury if a contract

General questions for a J&A citing "Unusual and Compelling Urgency"

- Is there evidence that the agency created the urgent need through a lack of advance planning?
- Does the J&A reasonably assert that there is only one firm that can promptly and properly can perform the required work?
- Does the J&A factually establish the adverse impact and critical need, or does the J&A rely on minimal conclusory statements from the requiring activity?
- If an urgency statement exists, is the